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What Every Mortgage Lender Should Know



ONTARIO
NEW HOME
WARRANTY
PROGRAM

About the Ontario New Home Warranty Program

New home buyers in Ontario receive substantial warranty protection, set out in the Ontario New Home Warranties Plan Act. A non-profit corporation, the Ontario New Home Warranty Program (ONHWP) administers the Act—registering builders, enrolling new homes and resolving disputes. The Program is paid for by fees builders and vendors pay to register with ONHWP and to enrol the new homes they sell.

The Program also provides information about builders and home buying to consumers, technical assistance to builders, and informs lawyers, real estate agents and mortgage lenders about the Program and the Act.

ONHWP has offices across the Province and reports annually to the Ontario Legislature through the Minister of Consumer and Commercial Relations.

How the Program works

Anyone building or selling a new home in Ontario must register with ONHWP, and enrol each new home or condominium unit. When a home is completed, the buyer and builder sign a Certificate of Completion and Possession (CCP) which confirms to the Program that the sale has taken place. The CCP is also the place for the buyer to note any repairs required. The builder sends the CCP to the Program, and the Program sends the buyer a Warranty Certificate and information package.

Basic warranty protection from the builder is for one year for most items, and two years for some items (see the section, *What is Covered*). Coverage for Major Structural Defects is for seven years. Problems arising during the builder's warranty period should be brought to the builder's attention by the buyer during the warranty period. If the builder does not correct the problems, the Program will help resolve the dispute.

What is Covered

1. **Deposits.** New home purchasers are covered for financial loss, including loss of deposits, to a maximum of \$20,000 if the builder cannot or will not complete the sale through no fault of the purchaser. (This refers to completing the sale of the home, not its construction.)
2. **Incomplete work.** If a person has title to a home or condominium unit and is living in it, ONHWP will compensate them for completion of any unfinished work to a maximum of 2 per cent of the home's price or \$5,000 — whichever is more. The incomplete items must be part of the Agreement of Purchase and Sale. People living in a condominium unit who do not yet have title, and find some work left undone, should contact the builder. If they require further help after that they should contact us, and we will contact the builder.
3. **Basic warranty — defects in workmanship and materials (1 year).** The builder warrants for one year from the date on the Warranty Certificate that the home is free from defects in workmanship and materials, is fit to live in and meets the Ontario Building Code.
4. **Two-year warranty:**
 - A) **"Power Train" Items.** For homes enroled after December 31, 1990, the builder warrants that the home is fit to live in, that it is free of violations of the Ontario Building Code's health and safety provisions, that it is free of defects in material or workmanship in the electrical, plumbing, and heating delivery and distribution systems; in the exterior cladding, caulking, windows and doors; and that the building envelope (all parts of the structure that contain the living space) is free of water penetration.

B) Basements leaks. The builder warrants for two years that the basement remains free of water penetration through the foundation. In condominiums, this protection includes all below-ground areas such as parking garages.

5. **Major Structural Defects (7 years).** For homes enroled after December 31, 1990, the purchaser is protected for seven years against Major Structural Defects. For homes enroled before that date, the protection lasts for five years. Coverage under this provision is by the builder initially, and after the builder's warranties expire, it becomes the responsibility of the Program. Under the Act, a major structural defect is defined as any defect that results in failure of a load-bearing part of the house's structure, or defects in materials or workmanship that adversely affect the use of the building as a home.

6. **Delayed closings & Delayed occupancy.** Similar rules govern delays in the closing date, and, for condominium units, delays in the occupancy date.

A) Delayed closings. The builder must not delay the closing date without notifying the purchaser. For minor delays of no more than 15 days, the purchaser must be notified at least 35 days before the original closing date. For longer delays, the builder must give at least 65 days' notice and set a new closing date. In either case, the builder gets five days without penalty. Beyond that, purchasers can claim compensation of up to \$5,000 for out-of-pocket expenses resulting from the delay.

To be compensated, the purchaser must close the sale. Purchasers are covered for reasonable moving costs and the cost of storing possessions, plus up to \$100 a day in living expenses. Claim forms are available through builders. Receipts are

needed for out-of-pocket expenses, although receipts aren't required for incidental expenses of up to \$25 a day.

Exceptions. There is no compensation for delays caused by things out of the builder's control, such as floods, natural disasters, or fires and strikes.

B) Delayed occupancy in condominiums.

For all condominium purchase agreements signed on or after March 1, 1991, the following rules apply:

- ☐ Every Agreement of Purchase and Sale must give either a confirmed occupancy date, or a tentative occupancy date that is clearly labelled tentative. If it gives a tentative date, the purchaser has the right to receive notice of when he or she will be told the confirmed occupancy date. The notice is to be based on a date or event that will trigger it — for example, the purchaser is told that he or she will be given the confirmed date when the foundation is complete, or when some other stage in construction is reached.
- ☐ The purchaser must be given this notice no later than 120 days before the confirmed date, and no later than 30 days following completion of the roof assembly.
- ☐ If the purchaser is not given notice of the confirmed date by 90 days prior to the tentative date in the original agreement, then the tentative date automatically becomes the confirmed date.
- ☐ The builder is allowed to offer occupancy earlier than the confirmed date, but is not allowed to demand it. The purchaser must consent to it in writing.
- ☐ As is the case for delayed closings for houses, the vendor may extend the confirmed occupancy date **once** by up to

120 days, if the purchaser is given written notice at least 65 days before the confirmed date. The vendor can also have a 15-day extension if the purchaser is given 35 days' notice.

- ☐ In all cases, vendors are permitted a five-day grace period when they give notice to their purchasers. Beyond that, any vendor who fails to give proper notice will be required to give the purchaser compensation of up to \$100 a day for living expenses and other expenses incurred as a result of the delay, to a maximum \$5,000 total direct costs.
- ☐ A vendor is **not** responsible for delays caused by strikes, fires, civil insurrection, floods or "Acts of God."

7. **Substitutions.** Purchasers are protected against substitutions of key elements in a new home or condominium unit, and in condominium common elements. If significant changes are made without approval, purchasers may be able to cancel the agreement and get their deposit back, and/or claim damages up to \$20,000.

Examples of builder substitutions not allowed include:

- Major changes to the original plan
- Reverse ("mirror image") plan
- House model and style of exterior
- Brick color and type of exterior finishes
- Exterior dimensions of the house
- Condominium unit model and style

The Agreement of Purchase and Sale may also give purchasers the right to choose certain colors and styles. If so, the builder cannot substitute these without consent. If he does, purchasers can demand that they be changed back, or the builder must make a cash settlement. Examples include:

- Interior and exterior paint colors (not shadings)
- Design and color of cabinets and countertops
- Color and type of kitchen and bath fixtures
- Style of interior trim
- Floor finishes

If the builder cannot supply a certain choice of color or finish, the purchaser must be notified in writing. She or he then has seven days to make new selections. If they don't, the builder has the right to substitute options of equal or better value.

NOTE: The maximum liability for warranty coverage on any new home or condominium unit is \$100,000. Individual condominium units are protected in the same way as houses. Common condominium elements are also covered from the date the project is registered, up to a maximum of \$50,000 times the number of units, to a maximum of \$2.5 million.

What is not covered

1. **Unfinished homes.** The Program does **not** employ contractors to complete unfinished homes (Although we do compensate for incomplete work in homes that are sufficiently complete to meet the definition of a home under the Act — see the section on Incomplete Work). In a custom-built home being constructed under contract, it is the purchaser's responsibility to supervise and pay for completion, and to comply with the Construction Liens Act. For other homes, it is the builder's responsibility to complete the items specified in the Agreement of Purchase and Sale.
2. **Defects in materials,** design and workmanship in anything supplied by the purchaser.

3. **Secondary damage** resulting from defects that are under warranty. The defects themselves are covered, but the personal or property damage they may cause is not.
4. **Normal** wear and tear.
5. **Normal shrinkage** of materials that dry out after construction.
6. **Damage** caused by dampness or condensation caused by the homeowner not maintaining adequate ventilation.
7. **Damage** caused by improper maintenance.
8. **Changes** made by the purchaser.
9. **Settling soil** in land around the house or along utility lines. (However, soil settlement under the building foundation itself is covered.)
10. **Damage** due to the effects of floods or acts of God, the owners, tenants, guests, wars, riots, insurrection, civil commotion or vandals.
11. **Damage** from insects and rodents (except when the construction did not meet the Ontario Building Code).
12. **Damage** caused by municipal services and other utilities.
13. **Surface defects in workmanship** and materials that were noted in writing and accepted by the owner at the date of possession.
14. **Temporary or seasonal dwellings** (such as cottages) that are not built on a permanent foundation and do not have insulation that would make them habitable year-round.

15. **New homes** built on existing footings or foundations.

The Condominium Difference

Condominium buyers receive full warranty protection, like any other home buyers. But because condominiums are made up of both individual units and shared areas called the common elements, there are some differences:

- ☐ Condominiums have two sets of warranties: One for the homeowner covering his or her unit and another for the condominium corporation and its Board of Directors, covering the common elements of the building.
- ☐ Once the project is registered as a condominium corporation, a Board of Directors, representing the unit owners, is elected. The Board should arrange with the builder for the Certificate of Completion and Possession on the common elements.
- ☐ Common elements are covered from the date the condominium corporation is registered, but an individual unit is covered from the date the purchaser moves in.
- ☐ Closing dates depend on registration and are out of the builder's control, so condominium buyers aren't compensated for delays in closing. However, they do have protection (described in the section, *What is Covered*) against delays in the occupancy date.
- ☐ Condominium unit owners should write to their Board of Directors (once the condominium is registered) about any problems in the common elements. The Board should then take the complaint to the builder and to ONHWP, if necessary.

- ☐ The Board may then ask ONHWP for a “pre-conciliation meeting,” to bring them together with the builder and an ONHWP representative, who will try to negotiate a settlement. If a settlement cannot be negotiated, the next step is for the Board to ask for a conciliation. This is another meeting between both sides and an ONHWP representative, who will make a written ruling on whether the defects are covered by warranty and, if so, set a time frame for their repair.

In The Lender's Interest

Before lending money

Before you agree to loan money for new home construction, ask the builder for proof of ONHWP registration and of the home's enrolment. The builder should provide a registration number and a copy of the ONHWP Enrolment Form for each home. The enrolment form may not be available at the time you issue your letter of commitment, but insist that the builder show it to you before you advance any money.

During construction

- ☐ From the time you lend the money until the house is sold, make sure everybody involved fills out the appropriate ONHWP forms and sends them to us promptly.
- ☐ Make sure regular inspections are carried out by the appropriate municipal and provincial government officials. You may also want to perform some inspections yourself or have them done independently, especially for large projects. This will assure you that the work is being done with approved materials and reliable workmanship, and lets you monitor the value of the work that's been done and what's left to do.

- ❑ If you're providing money on a "progress advance" basis, make sure there's always enough left in the account to complete construction if the builder defaults or goes bankrupt. ONHWP does not cover completion of unfinished work in these cases.
- ❑ Before releasing any hold-back money when the building is sold, make sure that the ONHWP Certificate of Completion and Possession has been completed, signed and forwarded to us so we can send the Warranty Certificate to the buyer.

If the builder defaults

You become the vendor if you take possession of a completed new home under power of sale or foreclosure. That means you must register as such with ONHWP and honor the warranty obligations. The home must also be re-enrolled with us, at a reduced fee. This applies to new, completed homes ready for occupancy. Unfinished homes are not covered, so you may sell them as-is without warranty.

NOTE: A home is considered finished if it's fit to live in and an occupancy permit can be issued. You cannot avoid the warranty requirements by leaving minor items unfinished.

- The Program has a variety of helpful literature for both home purchasers and builders. Call your nearest Regional Office for information.
- We can also supply a guest speaker for your meeting or seminar group, to talk about the Ontario New Home Warranty Program and you.

Offices of the Ontario New Home Warranty Program

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